

IN THE SENATE OF THE UNITED STATES.

MAY 26, 1858.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Joint Resolution No. 45.]

The Committee on Pensions, to whom was referred the petition of Elizabeth Uber, who asks the amount of pension that her mother, who died in 1857, might have obtained under act of July 4, 1836, as widow of Philip Wirt, who was an ensign in the revolutionary army ;

The petition of Andrew Chapman, who asks the amount of pension that his mother, who died in 1825, might obtain, if now living, as widow of his father, George Chapman, a revolutionary soldier, who died in 1798 ;

The petition of Dolly Lincoln, Margaret Smith, and Linda Sexton, who ask the amount of pension that their father, Noah Warriner, an officer of the revolution, might have received up to the time of his death, in 1849 ;

The petition of Cynthia Bishop, who asks the amount of pension that her father, Abram Foot, an officer of the revolution, might have received under the act of 7th June, 1832, up to the time of his death, in 1853 ;

The petition of James Hudgins, who, as son and administrator of Ruth Murphy, deceased, formerly widow of John Hudgins, deceased, a revolutionary officer, in behalf of himself and other heirs-at-law of said Ruth, asks the amount of pension that might have accrued to her under the act of 4th July, 1836, up to the time of her death, in 1847 ;

The petition of George Walters, asking amount of pension that his father, Michael Walters, and Elizabeth, his widow, might have obtained for said Michael's services as a revolutionary soldier ;

The petition of the heirs of Thomas Stevens, asking the amount of pension that he might have obtained for his revolutionary services ;

The petition of the surviving children of Jerathmiel Doty, praying the amount of pension that he might have obtained for his revolutionary services ;

The petition of Deborah Burlingham, asking the amount of pension which her father, James Dennison, might have obtained for his revolutionary services ;

The petition of Charles T. Bruckner, as administrator of William White, asking the amount of pension he might have received as a revolutionary soldier, under the act of 7th June, 1832, for distribution among his heirs ;

The joint resolution directing the Secretary of the Interior to pay certain pension claims therein specified—

Have had the same under consideration, and have instructed me to make an adverse report on each memorial and the resolution referred.

Your committee report that, waiving all objection to the insufficiency of testimony in behalf of the claims preferred, they have not found in the acts cited by the petitioners, or in any other acts of Congress, any legal authority for the claim of a child, or grandchild, or personal representative of a soldier of the revolution, or of the child, grandchild, or personal representative of the widow of such soldier, to the amount of money that the father, grandfather, or mother might have gotten during life, if he or she had made the same or sufficient proof before the proper department of the government, except in a class of cases, within which none of these petitions are embraced. In the opinion of your committee, the laws make no distinction (except in the class of cases referred to) between the children, grandchildren, or heirs-at-law of deceased revolutionary soldiers or widows. If the annuity which a revolutionary soldier, or his widow, is authorized by law to receive, is property in which he or she has a vested right, by virtue of the law, even before he or she is enrolled as a pensioner, then it is descendable, according to the rules of the State of his or her domicil ; then it is an inheritance which may be claimed by heirs, however remote, or it is subject to the payment of debts, and may be recovered by his or her creditor. Congress has never recognized this asserted vested right, although the Pension Office has, at different periods during the last twenty-five years, allowed many claims on the part of the children or grandchildren, or personal representatives, of such deceased soldiers or widows. On the contrary, Congress has always regarded and treated it as a mere bounty or gratuity, and has directed to whom it should go, after the death of the soldier or his widow, in every case where it was intended to be extended beyond the primary object of governmental favor. Thus, payment of the pension has been directed to be made to the widow, or, if no widow, to *minor* children under sixteen years of age, or to the children, or, if no child, to the legal representative, of the deceased, but not to be considered as assets of the estate, or liable to payment of its debts, regardless of the laws of domicil. As Congress has no constitutional power to regulate the descent or distribution of property in the States, it could not have passed such laws upon any other ground than that the patron may select and designate the beneficiaries of his bounty.

Besides, Congress has negatived this pretension of a vested right to pensions in virtue of the laws granting them, by declaring "that the right any person now has, or hereafter may acquire, to receive a pension, in virtue of any law of the United States, shall be construed to commence at the time of completing his testimony," &c.—(See sec. 2, act May 24, 1828, vol. 4, U. S. Statutes, p. 308.) Thereby denying the right of any person to a pension before or until he had made his

claim, and sustained it by sufficient testimony. This law is still on the statute book unrepealed and in full force, and has been from its date, and is now enforced at the Pension Office.

Wherever, therefore, any claim is preferred for a pension, or to arrears of pension, or to the sum which might have been obtained as a pension, (but was never claimed by deceased soldier or his deceased widow,) it behooves the claimant to establish his right, affirmatively, by some express grant of Congress, or by strong implications from the language of the law and the objects it was intended to accomplish.

No such right of these petitioners can be shown, in the opinion of the committee, by the express language of any act of Congress, or by any reasonable implication from the laws or their history.

The acts of Congress which have been relied on (and some of which are now cited by the petitioners) to sustain the right of children or grandchildren to all that the father or grandfather might have gotten as pension for services as a revolutionary soldier, had he applied for it and made sufficient proof in his lifetime, are the following:

1. "An act making provision for the payment of pensions to the widow or children of pensioners, in certain cases, and for other purposes." March 2, 1829.—(United States Statutes at Large, vol. 4, p. 350.)

2. "An act supplementary to the 'Act for the relief of certain surviving officers and soldiers of the revolution.'" January 7, 1832.—(Ib., p. 529.)

3. "An act granting half-pay to widows and orphans, where their husbands and fathers have died of wounds received in the military service of the United States, in certain cases." June 19, 1840.—(Ib., p. 385.)

The first of the above acts, in section 1st, directs that, "in case of an invalid *pensioner*," payment of "*arrears of pensions*" due to said *pensioner* at the time of his death shall be made to his legal representative.

And section 2d, in case of death of a revolutionary *pensioner*, payment "of *arrears of pension* due said person at the time of his death" shall be paid to his widow; or, if she be dead, to his children; or, if no child or children, then to his legal representatives. This act manifestly provides for widows, children, or legal representatives of *pensioners*, not *soldiers*—those whose claims to the bounty of the government have been admitted by their enrolment on the pension list, not those who have never been enrolled. All soldiers are not pensioners, and hence the words are not synonymous or convertible.

Moreover, it directs the payment of only *arrears* of pensions, which means the balance or remainder, and implies that part of the sum had been paid him before his death.

The second of the above acts provides pensions for revolutionary officers, soldiers, &c., to begin from the 4th of March, 1831, and to continue during his natural life, and directs payment of what had "accrued before the approval of said act," "to the person entitled to the same, as soon as may be," and "the pay which shall accrue thereafter shall be paid semi-annually;" "and in case of the death of any person embraced by the provisions of this act," "during the period

intervening between the semi-annual payments," "the proportionate amount of pay which shall accrue between the last preceding semi-annual payment and the death of such person, shall be paid to his widow, or, if he leaves no widow, to his children." This, like the former act of March 2, 1829, evidently provides only for payment of *arrears* of pension due a deceased *pensioner*, at his death, and only for what had accrued since the last preceding semi-annual payment to him. It does not warrant the payment to the widow or children of what had accrued before the approval of the act, or of more than a half year's allowance, or what might accrue between two semi-annual payments. Certainly, if Congress had intended it to embrace widows and children of revolutionary soldiers who did not themselves claim and enjoy the proffered bounty, provision would have been made for the payment to such widow or children of what had accrued before the approval of the act to the husband or father who might die before claiming or receiving it.

Congress made a distinction between *pensioners* and *soldiers*, and between widows and children of *pensioners*, and the widows and children of *soldiers*, and provided for paying the semi-annual allowance that might accrue thereafter to a pensioner, if he died without receiving it, to his widow or children.

It requires a very liberal construction of this act to justify payment of more than a half year's allowance to a widow or children of even a deceased *pensioner*, and it requires a great stretch of the act beyond its language and intention to make it embrace widows or children of deceased soldiers, (who were not pensioners,) and all that might have accrued from the 4th March, 1831, up to the date of his death.

The third act, above cited, in its first section, provides for widows and children of soldiers who *died of wounds* received in the military service of the United States, and *only for children under sixteen years of age*.

The second section provides for the widows and children of *soldiers* who died since the 4th of March, 1831, and before the 7th of June, 1832, giving to such widow and children "the amount of pension which would have accrued from 4th March, 1831, to the time of his death." This is the only act that provides for payment to widows or children of the sum a soldier might have gotten if he had become a pensioner. It proves that Congress knew and observed the distinction between a *pensioner* and *soldier*, and between the *arrears* of pay and the *full* pay. It argues, too, that the Congress of 1836 construed the act of 1832 as warranting the payment of nothing to the widows and children of soldiers who were not pensioners—nothing more than the balance of a pension accruing between two semi-annual payments. None of the petitioners come within the class provided for by the act of July 4, 1836, or ask what would have accrued from 4th March, 1831, to some day before the 7th June, 1832.

The last act cited (of June 19, 1840) provides, as its title imports, for "payment of pensions to executors or administrators of deceased *pensioners* in certain cases." The first section directs, "That in case any male *pensioner* shall die, leaving children, but no widow, the amount of pension due such *pensioner*, at the time of his death," shall



be paid to his administrator, to be by him distributed among said *pensioner's* children, but not to be considered assets of his estate, or liable for its debts. The second section provides, in like manner, for the children of a female *pensioner*. The third and last section directs payment of the amount of pension due any male or female *pensioner*, at the time of his or her death, to the children, if they prefer it, and not to the administrator.

It seems to your committee too plain to require argument that this act, like the two first cited, distinguishes between pensioners and soldiers, and provides only for children of the former, and not for children of the latter class of persons. Beside using the word *pensioner* to designate whose children shall receive governmental bounty, it gives them the *amount of pension due such pensioner* at the time of his or her death, thereby implying a sum presently payable to a person ascertained and admitted to be a creditor of the government. The act of May 24, 1828, directs when and how a soldier may become a creditor or pensioner of the government; declaring that it shall be when he has *completed his testimony*, proving *his military services*, according to certain prescribed forms of proof. How can it be said, without disregarding this provision and the generic import and common understanding of the word *pensioner*, that it embraces all soldiers, including those who never proved their military services, and never obtained a certificate from the government, recognizing them as creditors.

What soldier ever claimed to be a pensioner before his claim was established by testimony according to law, and allowed by the Pension Office? Many soldiers have refused to become pensioners, and would have been offended by being called pensioners. Congress never meant to call them pensioners, or to feed them with a bounty against their consent. It only provided the means and mode by which they might enjoy the bounty, if they chose to ask and receive it.

It is matter of surprise to the committee, and of reproach to the officers of the Pension Bureau, that they should have suffered the government to be defrauded of the large amount of money which has been paid to children of deceased soldiers who never asked or were allowed pensions. It is time that this abuse of the bounty of the government was corrected, and it should be done by the legislation of Congress.

The committee, therefore, report the accompanying joint resolution, and recommend its adoption by the Senate.

